IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 401 of 2000

Date of decision: 25.8.2011

Kashmir Singh

..... Petitioners

Versus

Jagir Singh and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE JORA SINGH

PRESENT: Mr. Amandeep Singh, Advocate, Amicus Curiae, with
Mr. M.S. Sidhu, Advocate for the petitioner.

Mr. Ritesh Pandey, Advocate, for respondents.

JORA SINGH, J.

Kashmir Singh, preferred this revision to impugn the judgment of acquittal dated 16.1.1999, rendered by the learned Additional Sessions Judge, Gurdaspur, in Sessions Case No. 3 of 1996, arising out of FIR No. 71 dated 2.7.1995, registered under Sections 326/324/323 of the Indian Penal Code (IPC-for short) at Police Station, Ghuman.

By the said judgment, Jagir Singh, Kewal Singh and Hardev Singh, were acquitted of the charge levelled against them.

Prosecution story, in brief, is that Rur Singh-complainant lodged a report with the police on the allegation that on 30.6.1995, Kewal Singh was scratching the common ridge. At that time Jagir Singh

and Hardev Singh, were also present there. Jagir Singh was armed with chhavi, Hardev Singh was armed with dang whereas Kewal Singh armed with spade. Jagir Singh, raised lalkara that he (Rur Singh) be caught and killed. Jagir Singh, Hardev Singh and Kewal Singh, armed with different weapons have caused injuries to him and Kashmir Singh. Jagir Singh, came there then accused had fled away from the spot with their respective weapons. Injured were shifted to hospital where they were medico-legally examined. Intimation was given to the police. ASI Paramjit Singh, came to the hospital then after obtaining opinion from the doctor regarding fitness of the injured, statement of Rur Singh, was recorded. After making endorsement, statement was sent to the police station on the basis of which formal FIR was recorded. Accused were arrested and after the completion of investigation, challan was presented in Court.

Cross-case under Sections 307/326/325/324/323/148/149 IPC was registered against the complainant party qua the same occurrence. Case under Section 307 IPC registered against the complainant party was committed to the Court of Session, so, the cross-case registered against Jagir Singh and others was also committed to the Court of Session for trial.

Respondents were charge-sheeted under Sections 326/324/323/34 IPC, to which they pleaded not guilty and claimed trial.

In order to substantiate its case, prosecution examined number of witnesses.

PW-1 Dr. Lakhwinder Singh, stated that on 30.6.1995 at about 4.15 p.m. he had medico-legally examined Rur Singh and found the following injuries on his person:

"1. 3 cm x 1 cm 1½ cm and muscle deep incised wound on the thinner eminence of left hand. Injury was associated with pain and swelling and was kept under observation for X-ray.

2. An incised wound 6 cm x 1 cm x 1½ cm and bone deep on the left side of the forehead 1 cm anterior to the interior hair line. The wound was transversely placed and underlying bone was cut partially. The bone cut was visible with naked eyes and was also felt with probe. On removing the clots wound was bleeding profusely.

3. 6 cm x 4 cm reddish contusion on the lateral aspect of right forearm. Injury was associated with pain and swelling and was kept under observation for X-ray.

4. 5 cm x 4 cm reddish contusion with diffused swelling on the antro-lateral of right forearm.

5. 4 cm x ¼ cm abrasion in the left lumber region."

Injuries No. 1 and 3 were kept under observation for X-ray. Injury No. 2 was grievous in nature whereas injuries No. 4 and 5 are simple in nature. Weapon used for injuries No. 1 and 2 was sharp edged whereas injuries No. 3 to 5 were caused with blunt weapon.

On the same day, at about 4.30 p.m., he had also medico-legally examined Kashmir Singh-appellant and found the following injuries on his person:

1. 2 cm x 1cm x 1½ cm and muscle deep incised wound on the posterior aspect of left upper arm in the upper 1/3rd. Injury was associated with pain and swelling and was kept under observation for X-ray.
2. 3 cm x 1 cm x 1½ cm and muscle deep incised wound on the anterior aspect of right forearm in the middle 1/3rd . Injury was associated with pain and swelling and was kept under observation for X-ray.
3. 3 cm x 2 cm reddish contusion in the left scapular region."

Injuries No. 1 and 2 were kept under observation for X-ray, while injury No. 3 was simple in nature. The duration of the injuries was about 2 to 6 hours.

PW-2 Rur Singh, is the complainant. He has reiterated his stand before the police as per his statement Ex. PH.

PW-3 Kashmir Singh-injured has also supported the version of Rur Singh-complainant.

PW-4 ASI Paramjit Singh, is the Investigating Officer.

After close of the prosecution evidence, statements of the respondents-accused under Section 313 Cr.P.C. were recorded. They denied all the allegations of the prosecution and pleaded to be innocent.

Defence version of the respondents-accused was that infact the complainant party had caused injuries to them for which they are facing trial. False case was registered to create defence.

After hearing learned Additional Public Prosecutor for the

State, learned defence counsel and from the perusal of evidence available on the file, respondents-accused were acquitted of the charge levelled against them.

I have heard learned counsel for the petitioner, learned counsel for the respondents and carefully gone through the evidence available on the file.

Learned counsel for the petitioner argued that on 30.6.1995, Kewal Singh-respondent/accused was scratching the common ridge. He was requested not to scratch the common ridge. Jagir Singh and Hardev Singh-respondents/accused were also present there. They were fully armed with different weapons and had caused injuries to Kashmir Singh and his father Rur Singh. Injured were medico-legally examined. 3 injuries were noticed on the person of Kashmir Singh and 5 injuries were noticed on the person of Rur Singh. Injury No. 2 noticed on the person of Rur Singh, was found grievous in nature. Injuries cannot be self-suffered or self-inflicted. Defence version of the respondents-accused is that Rur Singh and his son Kashmir Singh-petitioner, along with Jiwan Singh, Jagir Singh and Puran Singh, had caused injuries to them. Occurrence is an admitted fact. State case was registered against the petitioner-Kashmir Singh, Rur Singh, Jiwan Singh, Jagir Singh and Puran Singh and they were convicted under Sections 307/326/323 IPC but they were acquitted under Sections 148/149IPC that means there was a free fight. Either both the parties should have been acquitted or convicted. Petitioner party was convicted and respondent party was acquitted. Evidence on file was not rightly scrutinized by the trial court. Requested to set aside the impugned judgment.

Learned counsel for the respondents-accused who were acquitted by the trial Court argued that criminal case was registered against Rur Singh and others for causing injuries to Jagir Singh, Hardev Singh and Kewal Singh-respondents. Rur Singh's party was convicted and sentenced. Cross-case was registered but version of Rur Singh, was not found to be correct one. Allegation of Rur Singh and Kashmir Singh, was that when Kewal Singh, was scratching common ridge then Jagir Singh, Hardev Singh and Kewal Singh, had caused injuries to Rur Singh and Kewal Singh but no allegation of Rur Singh and Kashmir Singh that in defence they had caused injuries to Jagir Singh and his two sons. Evidence on file was rightly scrutinized by the trial Court and no scope for interference.

Admittedly, Kashmir Singh-petitioner is the son of Rur Singh. Hardev Singh and Kewal Singh are the sons of Jagir Singh-respondent. Land owned by Jagir Singh and others was adjoining the land of Rur Singh and others and there was a common ridge. Main case was registered against Rur Singh and others for causing injuries to Jagir Singh, Hardev Singh and Kewal Singh-respondents. In view of the statement of Rur Singh, cross-case was registered against Jagir Singh and his two sons. As per petitioner injuries were caused to Jagir Singh and his two sons in the exercise of right of private defence but no allegation of Rur Singh and Kashmir Singh that in defence they had also caused injuries to Jagir Singh and his two sons. Now, the main point which requires consideration is whether Rur Singh and Kashmir Singh, in exercise of their right of private defence had caused injuries to Jagir Singh and his two sons.

Rur Singh, as PW-2 stated that on the day of occurrence

i.e. on 30.6.1995 at about 10.00/11.00 a.m. he alongwith his son Kashmir Singh was in his fields. Kewal Singh, was scratching the common ridge. Kewal Singh was requested not to scratch the common ridge then Kewal Singh, Jagir Singh and Hardev Singh, fully armed came and caused injuries to him and his son Kashmir Singh. Rur Singh has not stated a word that when opposite party had attacked them then in self-defence they had caused injuries to Jagir Singh and his two sons.

Kashmir Singh appeared as PW-3 but he too has not stated a word that when respondents-accused who were acquitted by the trial Court attacked them then in defence they had caused injuries to Jagir Singh and his two sons. Case of the petitioner is that Jagir Singh and his two sons fully armed had caused injuries to them. No case of he petitioner that when Jagir Singh and his two sons caused injuries to them then in defence they had also caused injuries to Jagir Singh and his two sons.

Admittedly cross-case was registered against the petitioner-Kashmir Singh, his father Rur Singh and three other persons, namely, Puran Singh, Jiwan Singh and Jagir Singh. This fact is also correct one that petitioner and his companions were convicted and sentenced. Against the conviction and sentence, appeal was preferred. When one party caused injuries to the second party and second party caused injuries to the first party then Court is to see as to which party was the aggressor. Whether there was a free fight. When number of accused then whether the injuries were caused in furtherance of the common intention or common object but when case of one party is that second party had caused injuries and no allegation of the second party

that in defence injuries were caused then no question to opine as to which party was the aggressor. In the present case, allegation of the petitioner was that respondents-accused had caused injuries when they were restrained from scratching the common ridge. No allegation of the petitioner that when the respondents-accused had caused injuries then in defence they had caused injuries to the respondents-accused then learned counsel for the petitioner cannot argue that opposite party was the aggressor.

Rur Singh, in cross-examination admitted that opposite party was earlier admitted in the same hospital where they were admitted. His statement was recorded after the statement of opposite party. Further admitted that cross-case was registered against them. Rur Singh and Kashmir Singh, admitted that his son Kartar Singh brother of Kashmir Singh, was posted as Head Constable at Police Station Ghuman, at the time of occurrence. He was working with SHO of Police Station, Ghuman.

Injuries on the person of Kashmir Singh, were simple in nature. Injuries No. 2 and 3 on the person of Rur Singh, were found to be grievous in nature. Injury No. 3 was on the right forearm. 5 injuries were noticed on the person of Kewal Singh, 5 injuries were noticed on the person of Hardev Singh and 11 injuries were noticed on the person of Jagir Singh, so, possibility of false implication by self-suffering or self-inflicting injuries cannot be ruled out because second son of Rur Singh, was posted as Head Constable with the SHO, Police Station Ghuman at the time of occurrence. Injuries on the persons of Jagir Singh, Hardev Singh and Kewal Singh were suffered in the same occurrence were not explained by the petitioner. In case, respondent-accused who were

acquitted by the trial Court had caused injuries to Rur Singh and his son Kashmir Singh in the occurrence dated 30.8.1995 at about 10.00/11.00 a.m. then question is who had caused injuries to Jagir Singh, Hardev Singh and Kewal Singh.

Jagir Singh had witnessed the occurrence but he was not examined for the reasons best known to the prosecution. Kashmir Singh is the son of Rur Singh. Cross-case was registered against them. They were very much interested in the success of this case. Possibility of false implication of the second party cannot be ruled out, by self-suffering or self-inflicting injuries with the connivance of Kartar Singh S/o Rur Singh who was serving as HC at that time. Something could be said if allegation of the petitioner would have been that when Kewal Singh was restrained from scratching the ridge then Kewal Singh and his brother Hardev Singh and father Jagir Singh, had caused injuries to them, then in defence, they had caused injuries to Jagir Singh and his sons. 21 injures were noticed on the persons of opposite party. Some of the injuries were grievous in nature and on the vital parts of the body. Two independent witnesses were present at the time of occurrence, as per defence version of Jagir Singh and his two sons. According to the petitioner, occurrence was witnessed by Jagir Singh only. 8 injuries were noticed on the person of Rur Singh and his son Kashmir Singh, as per prosecution story at the hands of Jagir Singh and his two sons but 21 injuries on the persons of Jagir Singh and his two sons but no explanation from the side of petitioner as to how Jagir Singh and his two sons received 21 injuries in the same occurrence.

In view of all discussed above, I am of the opinion that evidence on file was rightly scrutinized by the trial Court. When two

views are possible and possible view was taken by the trial Court then judgment of acquittal is not to be set aside lightly on the ground that there is a possibility of second view. Judgment of acquittal is to be set aside if, Court is of the opinion that judgment is perverse or evidence on file is misread.

For the reasons recorded above, instant revision petition without merits is dismissed.

August 25, 2011 **(JORA SINGH)**
rishu **JUDGE**